double patenting over claims 1-35 of US Patent Application Serial No. 09/867,079 and over claims 1-33 of US Patent Application Serial No. 09/867,357. The Examiner points out that although not identical to either of these cases, the pending claims are not patentably distinct thereover.

In response, applicants respectfully traverse, and point out that the claims of the present application are directed to the treatment of depression or anxiety by administration of a combination of a CNS-penetrant NK-1 receptor antagonist and an antidepressant or an anxiolytic agent. In contrast, the '079 application is directed to a pharmaceutical composition with a similar utility comprising a combination of an NK-3 antagonist or a pharmaceutically acceptable salt thereof and a CNS-penetrant NK-1 receptor antagonist. However, there is no teaching or suggestion to replace an NK-3 antagonist with an antidepressant or an anxiolytic, or *vice versa,* for the claimed utility. In the absence of such a teaching or suggestion, the present claims would not be *prima facie* obvious to the skilled worker in the art. Also, it should be pointed out that the '079 application has a priority date of September 28, 2000, whereas the present application was filed originally on November 10, 1999.

Analogously, the '357 application is directed to a pharmaceutical composition for a similar utility comprising a combination of a $5HT_{1D}$ receptor antagonist or a pharmaceutically acceptable salt thereof and a CNS-penetrant NK-1 receptor antagonist. However, there is no teaching or suggestion to replace a $5HT_{1D}$ receptor antagonist with an antidepressant or an anxiolytic, or *vice versa,* for the claimed utility. In the absence of such a teaching or suggestion, the present claims would not be *prima facie* obvious over the '357 application.

Applicants submit that the present application was not filed to extend the patent term of the cited co-pending applications, and the claims of the subject application are not suggested or motivated by the cited applications. Accordingly, applicants request withdrawal of the rejection under obviousness-

type double patenting.

REJECTION UNDER 35 U.S.C. 103(a)

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,773,450 (Lowe) in view of *The Merck Index*. The Examiner notes that Lowe discloses pharmaceutical compositions of the elected species CP-122,721 as useful for the treatment of anxiety and depression, but does not disclose the additional requirement of an anxiolytic agent or an antidepressant. According to the Examiner, *The Merck Index* teaches that applicants' elected species sertraline is an antidepressant.

In response, applicant respectfully traverses the rejection. It should be noted that while *The Merck Index* may disclose the antidepressant utility of sertraline, it does not teach its utility in combination with a CNS-penetrant NK-1 receptor antagonist. No citation was made in the outstanding Office Action of a reference teaching or suggesting to one of ordinary skill in the art that an anxiolytic agent may be combined with a CNS-penetrant NK-1 receptor antagonist to treat depression or anxiety. Therefore, with respect to that portion of the claim, no prima *facie case* has been made to support the rejection of obviousness. Accordingly, applicants respectfully request withdrawal of the rejection over the anxiolytic portion of the claims.

Regarding the antidepressant utility, applicants submit that neither cited reference teaches the advantage of the combination of the recited components. Applicants believe their invention to offer an improved approach for the treatment of depression. Accordingly, applicants respectfully request withdrawal of the rejection of claims 1-16 under 35 U.S.C. 103(a) with respect to the antidepressant utility.

Applicants respectfully submit that the pending claims are allowable, and solicit the issuance of a notice to such effect. If a telephone interview is deemed to be helpful to expedite the prosecution of the subject application, the Examiner is invited to contact applicants' undersigned attorney at the telephone number provided.

No fee, other than the fee for a Petition for an Extension of Time, is believed to be necessary in connection with this Communication. Authorization, however, is hereby provided to charge any fee deemed required, or to credit any overpayment, to Deposit Account No. 16-1445.

Respectfully submitted,

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